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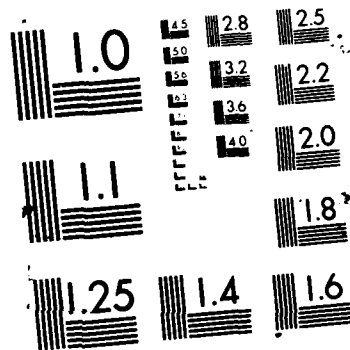
PROTECTING THE ELDERLY: FEDERAL AGENCIES' ROLE
CONCERNING QUESTIONABLE MA. (U) GENERAL ACCOUNTING
OFFICE WASHINGTON DC HUMAN RESOURCES DIV.. 26 AUG 87
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Fact Sheet for the Chairman, Select
Committee on Aging, House of
Representatives

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August 1987

AD-A185 676

PROTECTING THE ELDERLY

Federal Agencies' Role Concerning Questionable Marketing Practices



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United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-226668

August 26, 1987

The Honorable Edward R. Roybal
Chairman, Select Committee on Aging
House of Representatives

Dear Mr. Chairman:

By letter dated March 9, 1987, you stated your concern that certain "aging organizations" have attempted to solicit funds, sell insurance, and offer direct mail advertising of products in a manner that may frighten, threaten, or otherwise coerce the elderly into contributing money or buying products from these organizations. This was the subject of hearings entitled, "Direct Mail Solicitations to the Elderly," before your Committee on February 4, 1987.

We agreed with your office to (1) identify federal agencies with jurisdiction in reviewing the activities of organizations that use direct mail advertising, (2) identify federal statutes or regulations these agencies may use to protect the elderly, (3) determine current activities of these agencies to protect the elderly, and (4) determine agency educational activities to prevent possible abuses of the elderly. As part of our review, our Office of General Counsel reviewed pertinent federal legislation related to protecting individuals from deceptive business practices. We also discussed with officials of the United States Postal Service, Federal Trade Commission, and Department of Justice activities of their agencies relative to protecting the elderly and reviewed agency documents concerning these activities.

The United States Postal Service and the Federal Trade Commission share the major role in investigating and acting against violators of laws established to protect the general public from fraudulent and deceptive business practices through the use of the mails. However, applicable laws make no special reference to the elderly, and the enforcement activities of only one of the agencies we reviewed are directed at problems of the elderly in particular. The Postal Service specifically reviews fraudulent schemes directed against the elderly; but it could not give us the number of cases it had received or acted on that relate to the elderly because their case files are not indexed so as to permit identification of specific types of victims, such as the

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elderly. While the Postal Service and the Federal Trade Commission have educational programs dealing with fraudulent and deceptive business practices, these programs are not routinely directed at the elderly.

Other federal agencies play a role in protecting the public against various types of fraud and misrepresentation relating to specific items, for example, the Food and Drug Administration (food, drugs, medical devices, or cosmetics), the Securities and Exchange Commission (securities), and the Commodity Futures Trading Commission (commodities). However, sellers of the products regulated by these agencies do not use direct mail solicitation as their main method of doing business. The Department of Justice is also involved, but its role is generally one of bringing civil or criminal action to cases referred to it by the Postal Service, Federal Trade Commission, or other federal agencies.

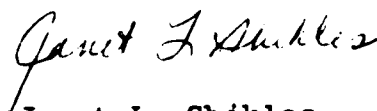
Further, the Internal Revenue Service and the Postal Service can examine the applications made by organizations for the purpose of deciding whether to grant, withhold, or revoke preferential tax treatment and reduced postage rates reserved for organizations of a charitable, educational, or social welfare nature.

This fact sheet provides information in some detail on the role and activities of federal agencies in examining or reviewing organizations that use direct mail to sell to or solicit from the elderly.

As arranged with your office, unless its contents are announced earlier, we plan no further distribution of this fact sheet until 30 days from the issue date. At that time, we will send copies to interested parties and make copies available to others on request.

Should you need additional information on the contents of this document, please call me at 275-5451.

Sincerely yours,



Janet L. Shikles
Associate Director

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PROTECTING THE ELDERLY:
FEDERAL AGENCIES' ROLE CONCERNING
QUESTIONABLE MARKETING PRACTICES

UNITED STATES POSTAL SERVICE

Pertinent Legislation

The United States Postal Service investigates potential violations of two laws that protect the elderly and others from fraudulent use of the mails: (1) the Mail Fraud Act (18 U.S.C. 1341) and (2) the Civil False Representation Statute (39 U.S.C. 3005). The Postal Service does not have a specific legislative mandate to protect the elderly, but does place special emphasis on reviewing fraudulent schemes directed against them.

Under the Mail Fraud Act, those who use or cause the mails to be used to further a fraudulent scheme can be criminally prosecuted and receive penalties of up to 5 years in prison and a \$1,000 fine. The purpose of this statute is to prevent the Postal Service from being used to carry out fraudulent schemes. The Department of Justice through the United States Attorney's Office for the district in which the fraudulent scheme occurred can prosecute this criminal offense. By agreement between the agencies, however, the Postal Service conducts investigations of such criminal activity and refers the cases to Justice for prosecution.

Under the Civil False Representation Statute, the Postal Service, after complying with the Administrative Procedures Act (5 U.S.C. 551) may withhold and return to the sender all mail addressed to anyone who solicits monies through the mails by false representation. The purpose is to protect the public from practices that use the mail to obtain money through false representations. The Postal Service is authorized to investigate the activity in question and issue an order that (1) directs the return of mail sent to such person or his representatives marked as in violation of the law, (2) forbids payment by a postmaster to such person or his representatives of any money order or postal note, and (3) requires such person or his representative to cease and desist from engaging in such schemes or devices. Also, the Postal Service may apply for a temporary restraining order and a preliminary injunction directing the detention of the violator's incoming mail. The purpose of these misrepresentation orders is not punishment of the violator, but prevention of future injury to the public by denying the use of the mails to aid in fraudulent schemes. Failure to comply with such orders can result in civil penalties of up to \$10,000 per day imposed upon the violator by federal district courts in actions litigated by the Department of Justice (39 U.S.C. 3012).

Enforcement

To enforce the above mentioned laws, the Postal Service uses postal inspectors to (1) investigate violations and seek enforcement from the appropriate federal and state agencies and (2) work with consumer groups to educate and inform the public. The responsibilities of the postal inspectors include activities designed to protect the public from acts of fraud in which the postal system was used in the conduct of an improper activity and other postal-related crimes. In addition, inspectors investigate burglaries and theft of mail and postal assets and physical attacks on postal employees and patrons. Inspectors place special emphasis on fraudulent schemes that have the greatest impact on the public and that target and victimize highly vulnerable groups such as the elderly and minorities.

The Postal Service has authority to grant preferential mail rates to charitable and educational organizations and/or organizations operating for the promotion of the social welfare. It is a crime, punishable by a fine of not more than \$500, to submit to the Postal Service any false evidence for the purpose of obtaining a preferential mailing rate. Recently, the Postal Service amended its requirements applicable to third-class bulk-rate mail to require that the words "Bulk Rate" or "Non Profit Org." are accorded greater prominence. It is hoped this will offset other design features that may mislead recipients as to the origin of the mailing. Because it is difficult to determine which business organizations may be directing their efforts to the elderly, we did not attempt to determine the number of organizations that may have received preferential mail rates from the Postal Service.

In fiscal year 1986, Postal Service efforts resulted in 6,606 convictions; 1,548 or 24 percent involved fraud, while the remaining cases were for other crimes against the Postal Service. According to Postal Service officials, it places a special emphasis on fraudulent cases involving the elderly. But, as these cases are not indexed in a manner that allows identification, the Postal Service is unable to determine how many of the above cases relate solely to the elderly.

Educational Activities

By law, the Postal Service is responsible for developing and disseminating information to educate consumers on false representation concerning products and/or services purchased through the mails. This task includes disseminating information on practices commonly associated with fraudulent schemes and appropriate measures an individual may take upon receiving mail he or she believes may be part of a fraudulent scheme. The Postal Service is active in many efforts, such as television announcements, to bring more awareness to the public concerning misleading advertising for various products.

FEDERAL TRADE COMMISSION

Pertinent Legislation

The Federal Trade Commission is responsible for protecting the general public, including the elderly, from deceptive acts or practices of companies selling products or services. Under the Federal Trade Commission Act (15 U.S.C. 45, 52-55), the Commission is empowered to prevent persons, partnerships, and corporations from using unfair or deceptive acts or practices in or affecting commerce, and is specifically directed to prevent the use of false advertisements regarding food, drugs, devices, or cosmetics. As with the laws dealing with the Postal Service, the Federal Trade Commission Act does not make special provision for the elderly.

Enforcement

The Commission has the authority to initiate civil proceedings in cases involving unfair or deceptive practices, seeking such remedies as consumer restitution, temporary and permanent injunctions, and civil penalties (up to \$10,000 per violation). It can issue administrative sanctions, including orders to cease and desist and orders for corrective advertising by a company, and refer violations of cease and desist orders to the Department of Justice for initiation of civil actions.

In 1986, the Commission conducted studies of and investigated both health-related and nonhealth-related activities affecting older Americans. For example, the Commission began a study of the extent and form of competition among hospitals in order to assist in the development of an effective antitrust policy for hospital mergers. Also, after an investigation by the Commission, an administrative law judge ruled that advertisements claiming that a company's dietary supplement reduced the chances of contracting cancer were false. The administrative law judge issued an order prohibiting false and unsubstantiated advertising claims for any product marketed for its ability to prevent or reduce the risk of disease in humans.

While such studies and investigations can benefit the elderly, Commission attorneys told us that problems of the elderly do not receive special enforcement emphasis and the Commission does not maintain statistics on the number of complaints received that specifically concern the elderly.

Educational Activities

Through its Office of Consumer and Business Education, the Commission is involved in preparing and disseminating numerous publications, public service announcements, and fact sheets of significant interest to older consumers. For example, the Commission in 1986 worked with the American Association of Retired Persons in distributing How to Write a Wrong, a booklet that explains how to complain effectively about consumer problems and get results.

OTHER FEDERAL AGENCIES

We identified other federal agencies that administer programs to protect individuals, including the elderly, from fraudulent and deceptive practices. We did not attempt to obtain information on agency enforcement or educational activities for these programs, because the sellers of the products regulated by these agencies do not use direct mail solicitation as their main method of doing business.

The Food and Drug Administration has responsibility for investigating violations of the federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.), which prohibits misbranding any food, drug, medical device, or cosmetic in interstate commerce and introducing or receiving such an item in interstate commerce. A food, drug, or medical device is misbranded if its labeling is false or misleading in any particular. Penalties of up to 1 year imprisonment and a \$1,000 fine may be imposed for a first offense. Violations are reported to the United States Attorney for institution of criminal proceedings.

The Securities and Exchange Commission has jurisdiction, under the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), to investigate various fraudulent and deceptive activities involving the sale of securities, seek injunctions and writs of mandamus, and refer matters to the Department of Justice for the institution of criminal proceedings. Violators of these laws may be fined up to \$10,000 and/or imprisoned for up to 5 years.

The Commodity Futures Trading Commission has jurisdiction over fraudulent and deceptive practices involving the sale of commodities, as set forth in the Commodity Futures Trading Commission Act (7 U.S.C. 551 et seq.). It is a felony, punishable by a fine of up to \$100,000 and/or up to 5 years imprisonment for an individual to disseminate false or misleading information affecting the price of any commodity in interstate commerce. A person convicted of a felony may be suspended from any registration under the act or denied registration for 5 years or such longer period as the Commission shall determine.

The Internal Revenue Service can exempt from federal taxation any corporation, community chest, fund, or foundation organized and operated exclusively for charitable or educational purposes, and civic leagues or organizations not organized for profit but operating exclusively for promotion of social welfare. However, the organization must apply for this exemption by providing evidence to the Commissioner of the Internal Revenue Service that it qualifies for such treatment. Because this exemption is available to all organizations that are eligible and we did not have any specific organization on which we were seeking information, we did not determine from the Internal Revenue Service the number of organizations receiving the exemption.

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